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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 07/17/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/845,976

Applicant(s)

PANEK, ROBERT JOSEPH

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-103 is/are pending in the application.
- 4a) Of the above claim(s) 103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-33, 37-49 and 53-102 is/are rejected.
- 7) ☒ Claim(s) 34-36 and 50-52 is/are objected to.
- 8) ☒ Claim(s) 54-103 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____.                                   |

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Newly submitted claim 103 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 103 is directed to a method of making a carrier.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 103 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-27 and 54-102 are rejected under 35 U.S.C. 102(b) as being anticipated by Marek.

Marek discloses a carrier configured to hold a container having a door mounted for reciprocation between opened and closed positions, the carrier comprising a body (the side walls and bottom of Marek's protective container and the body is mobile insofar as the protective container can be slid along a floor surface) adapted to receive the container and **an elongated arm (flange 56) coupled to the body for reciprocal extension along an axis** (a horizontal axis transverse to the length of flange 56) **of the arm** between an extended position and a retracted position with respect to the body, **said arm being adapted for engagement with the hypothetical door of the hypothetical container** (because parts of the door 50 could be attached to the hypothetical door of the hypothetical container), and the reciprocal extension of

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the arm **being adapted to reciprocate the hypothetical door of the hypothetical container** in the direction of the axis between opened and closed positions. A lever and foot pedal (70) and springs (60,62) complement the functionality of the arm.

Claims 22, 24-26, 29, 30, 37, 39-41 and 54-102 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by an "on sale" bar as submitted in the second paragraph of the Information Disclosure Statement (IDS) submitted as paper No. 8.

Applicant sold more than one year prior to the April 30, 2001 filing the SHARPSCART Foot Pedal Cart Order No. 8938FP (see page 16 of the SHARPSCART Brochure).

For claim 22, the SHARPSCART brochure (brochure) discloses a carrier (wire outer container) configured to hold a container (plastic inner container, red in color) having a door (plastic, translucent and white in color) mounted for reciprocation between opened and closed positions, the carrier comprising a mobile body portion (the side walls and bottom of the wire container) sized to receive the container and **an elongated arm** (either of the two stainless steel bars extending transversely over the opening of the inner container, unpainted) **coupled to the body for reciprocal extension along an axis** (the horizontal axis transverse to the length of the stainless steel bars) **of the arm** between an extended position and a retracted position with respect to the body, **said arm being adapted for engagement** (by an inverted J-shaped stainless steel bar) **with the door of the plastic inner container and the reciprocal extension of the arm being adapted to reciprocate the door of the container in the direction of the axis between opened and closed positions.**

For claim 37, the brochure also discloses **an elongated arm** (either of the two stainless steel bars extending transversely over the opening of the inner container, unpainted)

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*omit*  
↓  
**coupled to said body for reciprocal extension along an axis (the horizontal axis transverse to the length of the stainless steel bars) of said arm ... said axis of said arm being oriented substantially parallel to said path of said door of said container, ...said reciprocal extension of said arm being adapted to reciprocate said door ... along said path between said opened and closed positions.**

For claims 54, 60, 61, 67, 72, 73, 79, 80, 84, 85, 90, 91, 97, 98 and 102, the hood comprises the stainless steel U-shaped bars which are bolted to the top of the carrier and the pivoting and sliding mechanism, the sliding mechanism includes the transverse bars which extend over the opening, these bars are the arm coupled to the hood for reciprocal movement with respect to the hood, said arm being adapted for engagement with the door of the container, and said reciprocal movement of said arm being adapted to reciprocate the door of the container between the opened and closed positions.

For claims 61 and 66, the body portion has a hollow wall portion located near the foot pedal, within the hollow wall portion the springs are located, the springs are each flexible members coupled to the arm to facilitate said reciprocal movement.

For claims 67 and 72, the spring is coupled to the arm. Therefore, the spring is also coupled to the hood.

For claims 73, 79, 80, 84, 85, 90, 91 and 97, the hood is rotatable in two different way, the pivoting and sliding mechanism is rotatable and through the removal of three of the nuts that hold the U-shaped bars to the carrier and the loosening of the other nut, the entire hood may be rotated in a horizontal plane once the three unfastened bolts are freed from the carrier. The arm has a first portion (the horizontally extending straight bar extending over the opening to the

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container) coupled to the rotatable hood and a second portion (the downwardly extending, inverted J-shaped bar) angled (at 90 degrees) with respect to the first portion and oriented for engagement with a surface of the door when the rotatable hood is in the first position.

omit { For claims 85, 90, 91 and 97, the hood is part of the body portion.

omit { For claims 91 and 97, a stop is provided by the portions of the hood that will contact either the wire sidewall of the carrier or portions of the sliding and pivoting linkage on the sidewall of the carrier when the hood reaches the second position.

omit { For claims 98 and 102, insofar as the plastic or paint (paint is plastic) that coats the wire is not structurally different than plastic or paint applied by a rotational molding method, the rotationally-molded limitation is met.

omit { keep clearly anticipated by Sosan. <sup>60, 66, 72, 79, 84, 90, 97, 102</sup> Claims 22-27, 29, 32, 33 and 53-102 are rejected under 35 U.S.C. 102(b) as being

omit { For claims 22 and 53, Sosan discloses **an elongated arm (46) coupled to said body for reciprocal extension along an axis (the longitudinal axis of 46) of said arm ... said axis being adapted for engagement with the door of the container, and ... being adapted to reciprocate the door of the container in the direction of said axis between opened and closed positions.**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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*omit*  
Claims 59, 62, 65, 71, 78, 83, 89 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure.

For claims 59, 65, 71, 78, 83, 89 and 94, the brochure discloses the lever as the pivoting foot pedal mechanism. The brochure discloses the invention except for the locking bracket. It would have been obvious to add a locking bracket to prevent unauthorized opening of the container.

For claim 62, the brochure discloses the invention except for the cable. Cables are well known. It would have been obvious to replace the sliding and pivoting linkage on the sidewall of the carrier with a cable assembly to reduce weight and reduce the possibility of broken linkage parts from impact damage.

*omit*  
Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marek or Sosan in view of Baker.

Marek and Sosan disclose the invention except for the locking member and barrier. Baker teaches a locking member and barrier (30) which is positioned over the foot pedal to lock the foot pedal so that it can't be depressed. It would have been obvious to add the locking member and barrier to either Marek or Sosan to prevent inadvertent and unauthorized opening of the door of a container within a carrier.

*omit*  
Claims 29-33 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marek in view of Sosan.

Marek discloses the invention except for hood is not pivotably connected. Sosan teaches a pivotably connected hood. It would have been obvious to pivotably connect the hood in order

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to provide access to the open mouth of the container with the added convenience of keeping the hood attached so that the hood is not inadvertently misplaced.

*omit* Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sosan in view of Miles.

Sosan discloses the invention except for the lock and key. Miles teaches a storage device with a lock and key. It would have been obvious to modify the invention to include a lock and key to prevent unauthorized access.

*keep* Claims 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marek or Sosan in view of Mosior.

Marek and Sosan disclose the carrier but do not disclose an inner container of the combination. Mosior teaches an container with a sliding lid capable of being inserted into a carrier. It would have been obvious to add the inner container to the carrier in order to complete the combination to provide both the carrier and inner container simultaneously so that both the carrier and inner container can be used without needing to wait for the other component.

*keep* Claims 44-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marek or Sosan in view of Mosior as applied to claim 43 above, and further in view of Baker.

The combination disclose the invention except for the locking member and barrier. Baker teaches a locking member and barrier (30) which is positioned over the foot pedal to lock the foot pedal so that it can't be depressed. It would have been obvious to add the locking member and barrier to the combination to prevent inadvertent and unauthorized opening of the door of a container within a carrier.



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*keep* Claims 34-36 and 50-52 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments with respect to claims 22-102 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).


Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

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Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.

  
Stephen Castellano  
Primary Examiner  
Art Unit 3727

July 10, 2003

## hol·low

**hol·low** (hŏlŏ) *adjective*

**hol·low·er, hol·low·est**

1. Having a cavity, gap, or space within: *a hollow wall*.
2. Deeply indented or concave; sunken: "*His bearded face already has a set, hollow look*" (Conor Cruise O'Brien).
3. Without substance or character: *a hollow person*. See synonyms at vain.
4. Devoid of truth or validity; specious: "*Theirs is at best a hollow form of flattery*" (Annalyn Swan).
5. Having a reverberating, sepulchral sound: *hollow footsteps*.

*noun*

1. A cavity, gap, or space: *a hollow behind a wall*.
2. An indented or concave surface or area. See synonyms at hole.
3. A void; an emptiness: *a hollow in one's life*.
4. Also **hol·ler** (hŏl r) . *Appalachian Mountains*. A small valley between mountains.

*verb*

**hol·lowed, hol·low·ing, hol·lows** *verb, transitive*

1. To make hollow: *hollow out a pumpkin*.
2. To scoop or form by making concave: *hollow out a nest in the sand*.

*verb, intransitive*

To become hollow or empty.

[Middle English *holwe, holowe*, from *holgh*, hole, burrow (influenced by *hole*, hollow), from Old English *holh*.]

— **hol low·ly** *adverb*

— **hol low·ness** *noun*

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